

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2182 of 1996****For Approval and Signature:****HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Petitioner(s)**Versus****MANSUKH POPATBHAI RUPARELIYA SONAPAR, DIST. RAJKOT -
Respondent(s)**

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Appearance :

MR KJ KAKKAD for Petitioner(s) : 1 - 2.

MR JJ YAJNIK for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**Date : 13/09/2006****ORAL JUDGMENT**

This petition under Articles 226 and 227 of the
Constitution has been preferred by the District
Panchayat, Rajkot against the judgment and award

dated 12th January, 1996 passed by the Labour Judge, Rajkot in Reference (LCR) No.1994 of 1988.

By order dated 16th April, 1987 made by the Executive Engineer, Roads and Buildings Division, District Panchayat, Rajkot, the respondent-workman (hereinafter referred to as the '**the workman**') and many others were temporarily appointed as Work Charged Work Assistant specifically to man the scarcity relief work. The said appointment continued throughout the year 1987 and the first half of 1988. By order dated 19th July, 1988 made by the Executive Engineer, Rajkot, the Work Charged Work Assistants temporarily appointed on scarcity relief establishment were discharged from service on 20th July, 1988 after office hours. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court, Rajkot and registered as Reference No.1994 of 1988.

According to the workman, pursuant to the appointment order dated 16th April, 1987 he had joined the service on 28th April, 1987. He had continuously

served till 28th July, 1988 i.e. for more than one year. The service was terminated without following due process of law. The workman, therefore, claimed reinstatement in service and back-wages. The said claim was contested by the District Panchayat. It was the specific case of the District Panchayat that the workman and many others were temporarily appointed on scarcity relief establishment. On abolition of the said scarcity relief establishment the service of the workman was terminated in consonance with the terms and conditions of his appointment.

The Labour Court was, however, of the opinion that the workman having served for more than a year the Panchayat was under an obligation to follow the procedure in accordance with the Industrial Disputes Act, 1947 (hereinafter referred to as "**the Act**"). The procedure was to pay towards notice pay, retrenchment compensation, etc in accordance with the Act. Consequently, the Labour Court was, by impugned judgment and award dated 12th January, 1996, pleased to direct the Panchayat to reinstate the workman in

service and to pay 50% of back-wages.

The above-referred order of appointment dated 16th April, 1987 and the order of discharge dated 19th July, 1988 are on record. The order of appointment is very specific that the workman was appointed on scarcity relief establishment. Equally specific is the order of discharge from service. It is stated that there was no need to continue the scarcity relief establishment. The persons appointed on scarcity relief establishment, therefore, were discharged.

The question whether the scarcity relief establishment run by the State can be said to be an industry or not is no more *res integra*. Mr.Kakkad has submitted that the District Panchayat is a local authority exercising sovereign powers of the State. It is a Local Self Government and therefore, is a State within the meaning of Article 12 of the Constitution. It, therefore, cannot be said to be an industry as envisaged by Section 2(j) of the Act. The District Panchayat is, therefore, not governed by

the provisions contained in the Act. The Labour Court, Rajkot had no jurisdiction to entertain and decide the dispute raised by the workman.

In support of his contentions, Mr.Kakkad has relied upon the judgment of Division Bench of this Court in the case of **J.J.Shrimali Vs. District Development Officer, Mehsana & Ors.**, [(1989) 1 G.L.R. 396] and the judgment of the Full Bench of this Court in the case of **H.K.Makwana Vs. State of Gujarat & Ors.**, [(1994) 2 G.L.R. 1002].

On the similar issue raised in the matter of J.J.Shrimali (supra), the Division Bench of this Court has held that, **"When a State Government during famine and drought undertakes relief works intended to provide the much needed relief to scarcity affected people living in affected areas, it is not embarking upon any industrial or commercial enterprise but is merely trying to fulfill its obligation towards its people who are hit by nature's wrath. There is no desire or intention to launch a durable industrial or commercial enterprise but the**

paramount idea or consideration is to provide relief to the scarcity affected people who have been deprived of livelihood because of the failure of the monsoon. Since our agricultural economy depends heavily on the vagaries of the monsoon, failure of the monsoon and that too in successive three years, is bound to adversely affect people dependent on the monsoon. In rural areas failure of the monsoon would result in stoppage of all agricultural activities and those dependent on work in the fields would suddenly find themselves deprived of their livelihood. In such a situation the State machinery must step in to provide relief and succor to the affected people. If, instead of distributing doles which may hurt the dignity, self respect and sentiments of those receiving the same, the State Government introduces schemes which would provide temporary work to the affected people and pays for the same, can it be said that the State has embarked on a commercial or industrial activity so as to label relief works or projects as 'industry'? As pointed out earlier, the paramount idea is to provide relief for tiding over the difficult period and it matters not whether the

work undertaken is completed or not; the relief work or project will be wound up once nature showers its bounties in the affected area. It seems clear to us that by starting relief works or projects, the State Government is merely fulfilling its government duty towards the scarcity affected people and is not operating in the field of commerce or industry for the production or distribution of goods or services." It further held that "in the above special facts and circumstances of the case and having regard to the above purpose and object of the relief undertakings, specially its character, it is difficult to hold that the undertakings attract the definition of 'industry' in Section 2 (j) of the Act. In our view, the test laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) are not satisfied."

This view of the Division Bench has been confirmed by the Full Bench in the above referred matter of H.K.Makwana (supra).

Now that it is held that the scarcity relief

establishment cannot be said to be an industry within the meaning of Section 2 (j) of the Act. Neither the workman can be said to be a workman within the meaning of Section 2 (s) of the Act; nor the dispute raised by the workman can be said to be an industrial dispute within the meaning of the Act.

The Labour Court, Rajkot had no jurisdiction to entertain and decide the dispute raised by the workman. The impugned award is made without the authority and in contravention of the law settled by the above referred judgments.

In above view of the matter, the petition is allowed. The impugned judgment and order dated 12th January, 1996 passed by the Labour Court, Rajkot in Reference (LCR) No.1994 of 1988 is quashed and set aside. The claim made by the workman stands rejected. Rule is made absolute in the above terms. There shall be no order as to cost.

(MS. R.M.DOSHIT, J.)

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